But upon learning that the prospective purchaser was anxious to buy near East Point, and evidently fearing that he might not be pleased with the particular land which had been placed in the plaintiff's hands for sale, the defendant, in effect, said to the plaintiff: 'I now employ you to sell this man any piece of property situated near East Point in which I have an interest.' It makes no difference that the land actually sold was not the absolute property of the defendant. He owned an interest therein, and his employment of the plaintiff was in his own name, and not that of the corporation which held the legal title to the land. He expressly rendered himself liable upon his verbal contract with the plaintiff, whose services in procuring him a purchaser for the land inured to his benefit, as a stockholder in the corporation which owned it. There can be no question as to his power thus to render himself liable, although he did not own the fee to the property which he employed the agent to sell. See Mechem Ag. secs. 957–959. It is well settled that, where a broker employed to negotiate a sale procures a customer ready and able to purchase upon terms satisfactory to the principal, the principal cannot defeat the broker's right to commissions by taking the proceedings out of the hands of the broker and completing the sale himself. 4 Am. & Eng. Enc. Law (2d Ed.), 979; Mechem. Ag. sec. 967. In the case of *Davis* v. *Morgan*, 96 Ga. 518, 23 S. E. 417, this court held that in a suit for commissions by a real estate agent, while it was incumbent on the plaintiff to show that he had procured a person ready, willing, and able to purchase on the terms prescribed by the defendant, yet if the plaintiff in fact procured a person who was recognized either expressly or tacitly by the defendant as answering all these requirements, and the failure to complete the sale was due solely to the defendant's inability to make a good title to the land, the plaintiff would be entitled to his, compensation as if the sale had actually taken place. See, also, *Doonan* v. *Ives*, 73 Ga. 302; *Fenn* v. *Ware*, 100 Ga. 563, 28 S. E. 238." See *Crockett* v. *Grayson*, 98 Va. 354, 7 Va. Law Reg. 355.

TAXATION—COLLATERAL INHERITANCE—CONFLICT OF LAWS—SITUS OF PERSONAL PROPERTY.—Testatrix died in the State of New York, leaving a portion of her estate, consisting of stocks, bonds, mortgages and other evidences of indebtedness in Luzerne county, Pennsylvania. The evidence showed that the actual situs of the property had been for many years within the State of Pennsylvania, under the control of an agent or manager (who became later the executor) with power to invest and reinvest. The executor having filed an account of this property in Luzerne county, it was duly confirmed by the orphans court, and coming up for audit, the commonwealth made a claim for five per cent. of the whole, the evidence showing that all the legacies were to collaterals. *Held*, That the executor having taken out ancillary letters in Pennsylvania, and having elected to have full distribution of the fund made there, the portion of the estate thus administered is liable to the tax; and this, although the executor had voluntarily paid the collateral inheritance tax imposed by the laws of New York.

The following extract from the opinion of the lower court was approved upon appeal:

"While it is true that the mere residence of an agent, or registry of stock in

his name as such, does not seem to be material, yet securities separated from the person of the owner, and actually with an agent for collection, investment, and reinvestment, have been regarded as within the State of the agent, under ordinary annual tax laws. See *State* v. *St. Louis Co. Ct.*, 47 Mo. 600; *People* v. *Commissioners of Taxes*, 23 N. Y. 240; *Catlin* v. *Hull*, 21 Vt. 152; *People* v. *Smith*, 88 N. Y. 576; *Pullman Car Co.* v. *Pennsylvania*, 141 U. S. 18–22, 11 Sup. Ct. 876, 35 L. Ed. 613. In *People* v. *Smith*, *supra*, there is a judicial intimation which shows the growing tendency, at least in New York, to do away with the distinction between tangible and intangible, so far as the question of situs is concerned. 'It is clear,' says the court in that case, 'that mortgages, bonds, bills, and notes have for many purposes come to be regarded as property, not as mere evidence of debts, and that they may have a situs at the place they are found, like other visible, tangible chattels.' If, therefore, being 'within the State' subjects property to the burden of collateral inheritance tax, the consequence would seem to be that even intangibles held, as the property in the case at bar was, for many years prior to the death of testatrix, in the hands of agents in Pennsylvania, with authority to invest and reinvest, would be within the law.

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"It appears from the evidence taken at the audit that the collateral inheritance tax of our sister State, New York, has already been paid out of the fund going to collateral legatees, although it was paid by the executor in a manner that was at least quasi-voluntary; that is, without an adjudication by the surrogate or any adverse proceedings whatever. We believe that such payment would not, and should not, prevent our taking jurisdiction over this matter, but, in answer to the question of interstate comity raised at the argument, it might be interesting to inquire what the New York courts would do if the situation now before us should appear before them for adjudication. We find our answer in *Re Romaine* (1891), 127 N. Y. 88, 27 N. E. 759, 12 L. R. A. 401. The opinion of a majority of the court as delivered by Vann, J., was, in part, in these words: 'Where, however, the money of a non-resident is invested in this State, as it was by Mr. Romaine in the bond and mortgage in question, and in deposits made by him in savings banks, or where the property of a non-resident is habitually kept even for safety in this State, we think the statute applies, both in letter and in spirit. Such property is within the State in every reasonable sense, receives the protection of its laws and has every advantage from government, for the support of which taxes are laid, that it would have if it belonged to a resident.' Under the circumstances of this case, as we have found the facts, and the law applicable to it, as we read it, we have thus come to a different conclusion from that of our learned predecessor upon this bench, and are constrained, both by reason and authority, to hold that the claim of the commonwealth for her tax must be sustained."

PEREMPTORY INSTRUCTIONS, WHERE EVIDENCE NOT SUFFICIENT TO SUSTAIN A VERDICT.—A question of much importance and of first impression was passed upon recently by the Supreme Court of Appeals of West Virginia in *White* v. *L. Hoster Brewing Co.*, 41 S. E. 180, namely, the right of a trial court to instruct a jury to find for a party in whose favor the evidence plainly and decidedly preponderates. The issue was squarely presented, and as squarely met by the court,